UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, et al.,

Plaintiffs,

TAMMY BALDWIN, et al.,

Intervenor-Plaintiffs,

vs.

Case No. 11-CV-562
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants,

F. JAMES SENSENBRENNER, JR., et al.,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC., et al.,

Plaintiffs,

vs.

Case No. 11-CV-1011
JPS-DPW-RMD

MICHAEL BRENNAN, et al.,

Defendants.

INTERVENOR-DEFENDANTS' RESPONSE TO MOTIONS BY PLAINTIFFS AND INTERVENOR-PLAINTIFFS TO DEFER DECISION
(No. 11-CV-562)

The plaintiffs have filed a motion (Dkt. #117), joined in by the intervenor-plaintiffs (Dkt. #119), asking the Court to "defer" its decision on the intervenor-defendants' combined motions (Dkt. #75) for judgment on the pleadings with respect to the plaintiffs' second amended complaint and to dismiss the intervenor-plaintiffs' materially identical complaint-in-intervention. These motions were filed on December 8, and, after an agreed extension of the plaintiffs' time to file responsive briefs, reply briefs were filed on January 17.

So it is now six full weeks since the intervenor-defendants asked the Court to dismiss the Congressional redistricting (Act 44) claims for failure to state a claim, and the motions are ready to be decided. One would think that, with trial scheduled to begin in only a month, the plaintiffs would be as anxious as the defendants to know whether the Court thinks that their complaints state claims on which relief can be granted—indeed, would be anxious to know what has to be tried in this case and what is legally insufficient. And yet they now ask that the Court "defer" that decision.

Their stated reasons for doing so boil down to two, one of which is old and bad and the other of which is new and irrelevant.

First, the old reason. The plaintiffs insist that they want the Court to consider the testimony of Andrew D. Speth, Congressman Ryan's chief of staff, who largely drew the Act 44 map with input from the rest of the Wisconsin Congressional delegation. Mr. Speth was deposed on Tuesday, and the transcript has been delivered today. The plaintiffs already knew what he testified to because they took his deposition. To no one's surprise, he readily confirmed that there were many political considerations involved in how the Congressional district lines were drawn. The plaintiffs cannot claim surprise both because (as he testified) the Democratic Members of the House took part in the process and because ex-Congressman David R. Obey's

affidavit (Dkt. #100)—submitted by the intervenor-plaintiffs themselves—establishes that that is the way Congressional districting lines have been drawn in Wisconsin for many years. (*Id.* at ¶ 10.) That is, the maps have been drawn by the Members, and, naturally, they have been affected by politics.

The motions that the plaintiffs do not want the Court to decide—as motions under Rules 12(b)(6) and 12(c) must—concede, for purposes of argument (because that is what the plaintiffs pled), that politics played a part in the line drawing, but they argue that the complaints still fail to state claims because they do not set out a manageable standard for adjudicating a political gerrymandering claim, as the Supreme Court's *Vieth* and *LULAC* decisions have required (as read by, among other courts, the three-judge district courts that have thrown out political gerrymandering attacks on Illinois' districting maps in *Fair Map* and *Radogno*). Unless the plaintiffs intend to drop their political gerrymandering claims with respect to Act 44, these core legal issues must be decided, and the sooner the better for all concerned—including, respectfully, the Court.

The second, irrelevant reason why the plaintiffs want the Court to defer decision of these fully submitted motions is that they think they may be able to develop a new basis for attacking Acts 43 and 44, having to do with the way the U.S. Census Bureau reported the census blocks on which all districting plans are built. There is no such claim in the case now, and if the plaintiffs decide to (and get permission to) add one, the intervenor-defendants can deal with that problem when it arises. In that event, however, the Court will still have to decide the pending motions, which address the sufficiency of the existing complaints. Again, nothing is to be gained by delaying the Court's decision.

At the end of the day, the intervenor-defendants recognize that the Court will decide the pending motions when it decides to decide them, and they are content with that.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated this 19th day of January, 2012.

s/ Thomas L. Shriner, Jr.

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